

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

- - -

THE SOUTH CAROLINA STATE	:	3:	21-cv-03302-MGL-TJH-RMG
CONFERENCE OF THE NAACP,	:		
<i>et al.</i>	:		NOVEMBER 29, 2022
	:		
Plaintiffs,	:		VOLUME IX
v.	:		
	:		(PAGES 2039 - 2122)
THOMAS C. ALEXANDER, <i>et al.</i> ,	:		
	:		
Defendants.	:		

- - -

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THREE-JUDGE PANEL:
HONORABLE MARY GEIGER LEWIS, HONORABLE TOBY J. HEYTENS,
HONORABLE RICHARD M. GERGEL,
UNITED STATES DISTRICT COURT JUDGES

- - -

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1 *(The following bench trial proceedings resumed on*
2 *Tuesday, November 29th, 2022, at 9:00 a.m.)*

3 JUDGE GERGEL: Please be seated. Good morning,
4 everyone. I hope everyone had a wonder Thanksgiving. It's
5 amazing how much clearer you can think when you're actually
6 out of this courtroom, right.

7 We were all very impressed with the findings of fact,
8 conclusions of law by both sides and the helpful demonstrative
9 exhibits. All of that was very helpful

10 As we previously issued an order, plaintiffs go for
11 45 minutes in their opening of their close; the defendant,
12 60 minutes; and the plaintiffs have 15 minutes in reply.
13 Ms. Perry will hold up a sign at five minutes. We don't have
14 the fancy lights here, but I think that will be sufficient.

15 So, are there any questions, first, from the
16 plaintiffs?

17 MS. ADEN: No, your Honor.

18 THE COURT: From the defense?

19 MR. GORE: Good morning, your Honor.

20 THE COURT: Good morning, Mr. Gore. Good to see you,
21 sir.

22 MR. GORE: Good to see you. Thank you.

23 One housekeeping matter is I believe the record
24 remained open after the testimony of the last witness, Dr.
25 Imai, as we worked with the technical advisor and through

1 deposition designations.

2 JUDGE GERGEL: Correct.

3 MR. GORE: So, I don't think either party has
4 technically rested. And we haven't had the opportunity to --

5 THE COURT: Has the plaintiff rested?

6 MS. ADEN: Yes, your Honor.

7 THE COURT: Has the defense rested?

8 MR. GORE: Yes.

9 JUDGE GERGEL: Thank you, Mr. Gore.

10 MR. GORE: Thank you. And we would move for a
11 directed verdict and a judgment, as a matter of law, for all
12 the reasons we've stated in our proposed findings of fact and
13 conclusions of law, as well as our other briefings in the
14 case.

15 JUDGE GERGEL: In view of the evidence in a light
16 most favorable to the nonmoving party, there is a sufficient
17 basis for a rational factfinder to find for the plaintiffs.
18 On that basis, the motion for a directed verdict is denied.
19 We'll proceed to the merits.

20 MR. MOORE: And, your Honor, just for the record, I
21 join in.

22 MS. ADEN: And for the record, we object.

23 JUDGE GERGEL: Okay. Plaintiffs, please proceed.

24 MR. CEPEDA DERIEUX: Good morning, your Honors.

25 Raphael Cepeda, for the plaintiffs. I am mindful of the time

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1 we have and I will try to be quick. My colleague, Ms. Aden
2 will follow me.

3 JUDGE GERGEL: Just be aware, we've read the findings
4 of fact, conclusions of law. We obviously are very familiar
5 with the record, and we have read your demonstrative exhibits,
6 all which help us.

7 MR. CEPEDA DERIEUX: Understood. Thank you, your
8 Honor.

9 Your Honor, the General Assembly used race as a
10 predominant factor in the three challenged congressional
11 districts. The evidence at trial now shows that. Plaintiffs
12 have also shown that the enacted plan is a result of
13 intentional discrimination. It assigned a quarter of the
14 state's population to a single district to stifle their voice,
15 which my colleague, again, Ms. Aden, will speak more on later.
16 I will address the racial gerrymandering claim.

17 At opening, your Honor, Judge Gergel, you asked Mr.
18 Gore what are the numbers.

19 JUDGE GERGEL: I always get worried when someone's
20 quoting me.

21 MR. CEPEDA DERIEUX: I'll move very quickly through
22 this.

23 The point is, your Honor, that the evidence at trial
24 answers this question now. The numbers say that race
25 predominated in this plan. And we can start with the big

1 picture. Defendants concede that the enacted plan moves more
2 than 330,000 people from their old districts into new ones.
3 After the census, District 1 and District 6 needed changes.
4 District 6 was underpopulated by 84,740 people, and District 1
5 was overpopulated by about the same amount, 87,000. But the
6 enacted plan moved 80,689 people out of District 6. It
7 doubled down on that under-population. It then moved 140,000
8 people out of District 1, which only needed to shed about
9 90,000. District 5 was overpopulated and needed to shed 5,000
10 people. But the enacted plan removed eight times that number,
11 41,400 people. And District 2 was underpopulated. It needed
12 to pick up 9,000. The enacted plan moved 14,000 out of that
13 district. And that's the big picture on this map. The
14 defendants moved hundreds of thousands more voters than they
15 needed to have a population-balanced map.

16 This is the type of evidence that has raised flags
17 for courts of traditional principles, especially core
18 retention playing a backseat to racial motives. For example,
19 in *Page v. Virginia State Board of Election*, the court cited
20 as evidence that the fact that the legislature moved over
21 180,000 people from one district to the other, when it only
22 needed to move about a third of that number. But the
23 predominance question concerns which voters the legislature
24 decides to choose to move around. And when we look at who
25 this plan moved around, you can't avoid that race predominated

1 in the challenged districts.

2 This is a list of the nine South Carolina counties
3 with the highest BVAP. Of these, seven are split. The
4 defendants disproportionately cracked Black communities
5 located along the District 6 boundary, like Richland,
6 Charleston, Orangeburg and Sumter. And what did that cracking
7 accomplish? Well, first, District 6's BVAP drops under
8 50 percent. South Carolina no longer has a majority Black
9 district. And the obvious question, as Dr. Duchin said, is if
10 the Black voting age population comes down in District 6,
11 well, where does it go? And the answer here is that the
12 difference simply vanishes. No other district changes
13 meaningfully. And that doesn't happen by accident. It takes
14 precision engineering to ensure that the BVAP in every other
15 district stays at around the same place it was before. And as
16 Dr. Duchin testified, what that means is that there's no
17 meaningful electoral opportunity for Black voters outside of
18 District 6. And more than half of the counties we saw in the
19 previous slide are in the challenged districts. So, let's
20 take a closer look at these districts. And we can start with
21 District 1.

22 First, the enacted plan drastically reconfigures
23 Charleston County. In the old map, most of Charleston County
24 was in District 1. That's not true anymore. The county is
25 now in District 6. In the old plan, District 6 approached

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1 Charleston from the northeast through Berkeley, which we can
2 see here. It now approaches from the west through Dorchester
3 and West Ashley. You can see that split here before and after
4 redistricting. The lines on the right, which one of my
5 colleagues helpfully pointed out looked like a Triceratops,
6 come in and grab many more Black residents from District 1 and
7 places them in District 6. And that makes a big difference,
8 because the VTDs that this approach moved into District 6 from
9 District 1 are about 60 percent of the Charleston County BVAP
10 that moves around. The net effect is that almost 80 percent
11 of Black adults who live in Charleston County are now in
12 District 6. And that is a huge change from the 50/50 split
13 that the plan used to have.

14 This is the type of evidence that the district court
15 credited in *Bethune-Hill*, evidence that when places are split,
16 most of the portions allocated to the challenged districts had
17 a higher BVAP percentage than the portions allocated to the
18 non-challenged districts -- start splits in the racial
19 composition of populations moved in and out of a district --
20 the Supreme Court has said in *Bethune-Hill* are significant and
21 relevant evidence. It's also the kind of evidence that was
22 relevant in *Cooper*. And it's the same evidence that was at
23 issue in cases like *Alabama Legislative Black Caucus* and in
24 *Page*. And we discussed several of these in our findings at
25 733 through 34.

1 But that's not all District 1 did. The new District
2 1 also takes in a different 52,000 people from District 6.
3 And as the Court heard, those migrations were predominately
4 White. They happened in Jasper, where the plan split the
5 county to grab Sun City; in Dorchester, where the map doesn't
6 just split the county, it cracks specific VTDs on racial
7 lines, the parts of Dorchester in District 1 are at least
8 nine points higher in White VAP than the district as a whole;
9 and in Beaufort, which has one of the lowest BVAPs of any
10 county in the state and is now completely in District 1. When
11 the smoke cleared on this movement of almost 200,000 people
12 between Districts 1 and 6, District 1's BVAP stayed within
13 .1 percent of what it was in the previous map. Again,
14 precision engineering. In fact, District 1 ends up with the
15 lowest Black voting age population of all the districts. And
16 that significant movement of people with such a precise net
17 effect matters.

18 *Alabama Legislative Caucus* is instructive. In that
19 case, you had mass movement of people from one district to the
20 other, and at the end of the day, just 36 White individuals
21 were added to the district. The Supreme Court called that a
22 remarkable feat. And on remand, the panel explained that the
23 very fact that such a large number of individuals had been
24 moved from one district to the other, both White and Black,
25 was significant and cause for concern. It doesn't happen by

1 accident or a coincidence. And the racial splits that we see
2 in these movements are exactly the kind of evidence that the
3 Supreme Court has warned point to significant evidence of
4 racial predominance.

5 But the Court also looks to whether traditional
6 redistricting criteria were subordinated, And District 1
7 failed that test handily. First, it splits counties and
8 precincts unnecessarily. The House and Senate held public
9 hearings. The record shows that requests to make Charleston
10 County whole were the main takeaway from those. Some in
11 Beaufort also asked for that county to be fixed, but nobody
12 spoke of wanting Charleston to remain split. And that's
13 important, because maps in the record show that both of these
14 requests could be accommodated; Beaufort and Charleston could
15 be whole in the same district. And that's in evidence most
16 clearly in other maps like Senate Amendment 2A, the League of
17 Women Voters' maps, but also in other maps in the record that
18 defendants developed or received: For example, Senate
19 Amendment 43A, the Sabb Charleston Strong map; 45C, the
20 Charleston/Beaufort whole map; and 46C, the MBM plan. And if
21 defendants didn't like those alternatives, they still knew
22 that Beaufort and Charleston could easily be placed in the
23 same districts. But defendants and their agents downplayed
24 that fact in public.

25 Here, we have another example. Representative Jordan

1 knew from staff that it was easy enough to put both Beaufort
2 and Charleston in District 1. Instead, he publicly claimed
3 that it was impossible to put both counties in the same
4 district. And at the end of the day, it was Beaufort, one of
5 the most predominately White counties in the state, that was
6 made whole. The split in Charleston County only deepened. It
7 now follows the Black migration to North Charleston. With
8 those choices, defendants made clear what private talking
9 points already spelled out: County lines are more important
10 in some places than others.

11 Second, the enacted plan disrespects well-known
12 communities of interest in District 1. There is no doubt that
13 Charleston and North Charleston form a well-defined community
14 of interest. Mr. Roberts testified at trial that African
15 Americans living in Charleston have a very close community of
16 interest with the rest of the county. So, the decision to
17 ignore that community of interest, while crediting calls in
18 Beaufort or Sun City, that matters. That is meaningful.

19 Third, the enacted District 1 map ignores contiguity
20 in one notable example. But Senate guidelines say contiguity
21 by water is proper only in service of other criteria. But the
22 northern and eastern portion of the District 1 are not
23 connected by land with the southern and western part of the
24 district. This is a new feature. It can't be explained by
25 core retention.

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1 Fourth, expert analysis in the record showed an
2 unavoidable correlation between race and the enacted
3 district's composition. And it shows that the use of race
4 much better explains the movement of voters in these districts
5 than partisan affiliation. Dr. Ragusa, for example, found
6 that Black voters were excluded from District 1 in a
7 statistically and substantively significant fashion. Dr.
8 Liu's findings tracked those findings, and he found that Black
9 Democrats were moved differently than White Democrats,
10 confirming that race is a driving factor, not party. Experts'
11 main findings are summarized in another -- I guess, in one of
12 our -- there we go. But I've heard the Court, you've read the
13 reports, so we'll move along to District 2.

14 This pattern repeats again in District 2. The verse
15 for heavily Black communities, like Richland or Orangeburg,
16 stay split. Meanwhile, predominately White counties, like
17 Lexington County or Barnwell, are left intact. The evidence
18 shows that Columbia and its surrounding areas in Richland
19 County form a prominent community of interest. The enacted
20 plan splits them over options that would have healed the way
21 communities in those counties are and have been cracked. And
22 it's worthwhile here to focus on Richland's tell-tale hook,
23 because it speaks to many themes that repeat time and time
24 again in this case. The hook cuts right through Richland and
25 splits Columbia as it does. It puts a district line between

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1 where people work and where they live, as Dr. Duchin
2 testified. As the image above shows, it's a pretty clear
3 racial divide, and it is key to the drastically different
4 makeup up of the portion of Richland County that is in
5 District 2 from the one in District 6. The hook grabs areas
6 where Black population has exploded since 2010 and puts them
7 in CD 2. It leaves a piece of Richland with higher Black
8 population in District 6 and grabs a piece that is less Black
9 but still far more diverse than the rest of District 2. It's
10 only possible if you subordinate traditional redistricting
11 principles to race. It's not compact.

12 JUDGE GERGEL: Mr. Cepeda, what are we to make of the
13 fact that this was part of the *Backus* case, and the *Backus*
14 court upheld the hook? Have there been any changes in the
15 hook over the years in terms of the composition of the hook?

16 MR. CEPEDA DERIEUX: Certainly, your Honor. The
17 hook, as it is in the enacted plan, is not a hundred percent
18 the same hook as it was in the previous --

19 JUDGE GERGEL: But have there been population
20 changes? I've lived in Richland County a lot of years, and it
21 looks like to me where the hook is, the African-American
22 population has significantly increased since '92, when it was
23 originally adopted. So, what may have been, at one point, a
24 mostly rural area, as it was, it's becoming increasingly
25 suburban and more heavily African American.

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1 MR. CEPEDA DERIEUX: I think that's correct, your
2 Honor. And there is evidence in the record. I believe Dr.
3 Duchin testified to the heavy growth of the Black population
4 in Richland County from the 2011 map till now. Representative
5 Garvin also spoke to how the hook goes through communities
6 that have, in his words, "exploded." So --

7 JUDGE GERGEL: But isn't that more a potential
8 Section-2 problem? I mean, if, in fact, Congressman Clyburn
9 supported the hook, continuation of the hook -- it's been
10 there since '92, it was ratified effectively in *Backus*. Isn't
11 it more -- I mean, proving intent may be hard there, because
12 they seem to be alternative explanations. But doesn't this
13 raise potential Section-2 problems? Because it looks like,
14 just looking at your map, particularly those boxes around
15 Ridge View and Rice Creek, those are all Black suburban
16 communities now, predominately Black suburban communities.
17 And it seems to be very much part of a cohesive block. I
18 mean, I know you haven't raised Section 2, it just struck me
19 that if there's an argument there, it's a Section-2 issue, not
20 so much a 14th-Amendment issue.

21 MR. CEPEDA DERIEUX: Well, your Honor, I believe I
22 was getting to the fact that I think it goes more to the fact
23 that each plan, each apportionment plan, needs to stand on its
24 own.

25 JUDGE GERGEL: I agree. But you've got to prove

1 intent.

2 MR. CEPEDA DERIEUX: Correct.

3 JUDGE GERGEL: And there hadn't been any -- I mean,
4 obviously Congressman Clyburn did not challenge, if I remember
5 the proposed plan. And that obviously weighs on us. I mean,
6 did he -- it's hard to imagine that he would have racial
7 intent. And it existed before. It just looks like to me that
8 trying to treat this district -- this area as a static is
9 wrong. It's changing very rapidly. And what might have been
10 not a particularly difficult issue under Section 2 may have
11 evolved into one, because it looks like there's a
12 concentration of African-American voters which are cracked
13 right there at the Rice Creek precincts, which, by the way, I
14 don't think existed at one point. I mean, this was a very
15 rural area 30 years ago.

16 MR. CEPEDA DERIEUX: Maybe so, your Honor. What I
17 will say is that the hook, and the way the enacted plan treats
18 Richland, the way it treats Orangeburg, which I was about to
19 address, only gets to the way that defendants have deployed
20 selective redistricting criteria.

21 JUDGE GERGEL: I agree. You know, in many of these
22 areas, Congressman Clyburn recommended some of these splits,
23 like in Orangeburg. And Senate Bright Matthews recommended
24 the Sun City split. What are we to make of these
25 African-American legislators, with great records on advocating

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1 equal justice, coming in and recommending -- how do we define
2 racial intent there?

3 MR. CEPEDA DERIEUX: Well, your Honor, I guess where
4 I was going with this is, defendants have --

5 And if we can go, Stephen, to slide 57.

6 This slide depicts the way that the criteria has been
7 used throughout this map. It summarizes what defendants
8 purportedly applied to each county. And what it shows is a
9 hodgepodge. You mentioned Senator Bright Matthews' testimony
10 in Jasper County. It gets credited in Jasper County, it
11 doesn't get credited in Charleston County, which she also
12 represents. Avoiding county splits was important in Beaufort
13 and Berkeley; it wasn't a concern in Charleston, Jasper,
14 Orangeburg, Richland or Sumter.

15 VTD splits, defendants say they reduced VTD splits in
16 the map. But it's important where those VTD splits are,
17 because, of the 13 that are left in the map, 11 happened along
18 the District-6 boundaries. State legislative districts get
19 cherry-picked. In Dorchester, the enacted plan split two
20 VTDs, Lincoln and Winthrop (*phonetic*). It follows House
21 District 98's line, according to defendants' findings. But a
22 Senate district line runs around the same precincts without
23 splitting them. That's Senate Districts 41 and 42. And they
24 could have used that line instead with the same benefit to
25 election administration. Public input was important to

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1 defendants in Sun City in Jasper, like I said, but not in
2 Charleston or Richland. And as you mentioned, your Honor,
3 legislator input was important for Jasper and Sumter, but only
4 sometimes. And in Charleston --

5 JUDGE GERGEL: For instance, in CD 1, the move into
6 St. Andrews was not recommended by Congressman Clyburn. Least
7 changed wasn't followed in Charleston County in CD 1 and CD 6.
8 So, you know, there are differences. But, Mr. Roberts
9 testified that Charleston was different from every other
10 county, right? He said that. And he said that their changes
11 were dramatic --

12 MR. CEPEDA DERIEUX: Yes.

13 JUDGE GERGEL: -- and there was great disparity.

14 MR CEPEDA DERIEUX: Yes, he did.

15 JUDGE GERGEL: He didn't say it about any of these
16 others. But he did acknowledge that. And he's the map
17 drawer. You know, y'all spent a lot of time talking about the
18 House plan. I kept trying to tell Mr. Moore to be quiet,
19 because it was irrelevant. It was immaterial. It was a
20 Senate plan designed by Mr. Roberts. If there's intent, it
21 comes out of that map drawer and the Senate plan, because the
22 House merely ratifies it. I mean, isn't that fair?

23 MR. CEPEDA DERIEUX: Again, I think, your Honor, it's
24 fair, but in the sense that the hodgepodge criteria that Mr.
25 Roberts mentioned isn't -- there's no organizing principle

1 once you look at its --

2 JUDGE GERGEL: Well, he said it was an organizing
3 principle, but it fell apart in Charleston.

4 MR. CEPEDA DERIEUX: I'm sorry, your Honor?

5 JUDGE GERGEL: He said he had an organizing
6 principle, least-changed Clyburn plan. When he got to
7 Charleston, none of that was followed, not least changed, not
8 the Clyburn plan. Mr. Clyburn did not recommend the changes
9 into St. Andrews.

10 MR. CEPEDA DERIEUX: And I would absolutely agree
11 with that. There's nothing least changed about Charleston or
12 District 1. What follows, however, your Honor, is that the
13 way that the other criteria were applied -- as I said, as I
14 explained with this chart, they don't really track any
15 organizing principle.

16 JUDGE GERGEL: I got you.

17 MR. CEPEDA DERIEUX: Yes. Thank you, your Honor.
18 I'll move on to District 5.

19 And if we could go to 38, Stephen.

20 The split in Sumter separates Sumter City, a majority
21 Black city, as well as communities like east Sumter and
22 Mulberry. It deepened a crack in the county between Districts
23 5 and 6. The green shading reflects each precinct's BVAP,
24 while the red area approximates Sumter city lines. And as you
25 can see, the yellow congressional line goes straight to the

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1 center of Sumter, splitting Black communities. And once
2 again, expert analysis shows that race predominated over
3 traditional redistricting principles. According to Dr.
4 Ragusa's local analysis, Black voters were excluded from
5 District 5 in statistically and substantively consequential
6 fashion. Meanwhile, Dr. Imai's 10,000 statewide simulations
7 confirm that the enacted plan is an extreme outlier in this
8 sense too. In fact, only 1.2 percent of Dr. Imai's
9 simulations involve splitting Sumter the way it ends up.

10 So, let's talk about the use of race in this map,
11 your Honors. Despite using racial data, defendants are
12 adamant that they never conducted or considered any analysis
13 under the Voting Rights Act. We know key legislators were
14 aware of the racial makeup of their districts. We know
15 legislators and staff considered race at various stages of the
16 redistricting process. And we can consider the legislators,
17 including Senator Campsen. Senator Campsen testified that he
18 can't help but know the racial composition of his district.
19 We know racial data was available to any legislator who asked
20 for it and we know that Senator Campsen reviewed racial
21 breakdowns of Charleston area movements. We also know both
22 House and Senate redistricting staff had a realtime view into
23 the racial changes to the maps they drew. For the Senate, Mr.
24 Roberts explained that it was displayed the entire time. And
25 that's corroborated by deposition testimony of key staffers,

1 like Mr. Fiffick and Mr. Terrine.

2 Even more damning, we know one thing racial data
3 wasn't used for, compliance with the Voting Rights Act.
4 Defendants' witnesses agree on this. No Section 2 or racial
5 polarization analysis was done to confirm that the enacted
6 plan didn't dilute Black voter opportunity. And that matters
7 for many reasons. But for purposes of the racial
8 gerrymandering claim, it matters because the defendants admit
9 that all this data that they had, they reviewed, they
10 considered, was not used for non-dilutive purposes.

11 Plaintiffs have also met their burden to show it was
12 race, not a drive for partisan advantage, that better explains
13 the enacted plan. The evidence de-couples race from
14 partisanship and shows that race predominated in four ways.
15 First, it shows that defendants' argument that the enacted
16 plan advances partisan interest is a post hoc rationale. For
17 starters, key witnesses publicly and contemporaneously
18 rejected partisan motivations. Here, we see Senator Campsen's
19 statement to the full Senate committee in January. Senator
20 Campsen publicly rejected an accusation of partisan
21 gerrymandering.

22 Now, at trial, Senator Campsen and counsel tried to
23 argue that what he meant here was very formal. It was
24 legalese. He was saying that the plan didn't subordinate
25 redistricting principles. But the Court can look at just the

1 next few lines in the transcript, which are included here.
2 Senator Campsen didn't speak of other redistricting
3 principles, or subordinating them, he was comparing his
4 amendment's partisan effect to the gap in the previous plan to
5 point out that this was not a radical change. He was
6 downplaying the claim that it was partisan driven.

7 And, here, I would point the Court to cases like
8 *Harris v. McCrory*, which became *Cooper*; and *Covington*, which
9 the Supreme Court also affirmed, where a court considered
10 contemporaneous statements from key defendants and the courts
11 said that those statements were more probative of realtime
12 intent than later attempts to walk them back. And the *Harris*
13 language I'm thinking about is *159 F.Supp. 3d 620*, for
14 example.

15 Senator Campsen isn't the only witness to disclaim a
16 partisan goal. Various other witnesses, including key senate
17 staffers and Mr. Roberts's own boss did it as well. And at
18 the end of the day, to borrow from the *Covington* district
19 court case, all defendants are able to point to are, quote,
20 "Scattered references in the record to the political nature or
21 redistricting, or the idea that politics has always
22 traditionally played a role." That is not enough to beat
23 contemporaneous statements or actual testimony that political
24 motivations didn't drive redistricting. Second, the
25 plaintiffs have disentangled race from party through their

1 expert witnesses, who have reports and testimony in the record
2 that this aggregates party from race.

3 And at this point, I'd like to address two
4 expert-related points that defendants raised in their
5 findings. First, I'd like to dispel the notion that this
6 Court's decision in *Backus* sets a baseline that every expert
7 who testifies in a racial gerrymandering case must speak to --
8 that every expert who testifies in a racial gerrymandering
9 case must speak to every single redistricting criteria.

10 *Backus* says no such thing. *Backus* specifically explained that
11 Dr. McDonald had failed to consider all race-neutral criteria
12 used in South Carolina. But the Court's discussion shows that
13 "all" in that sense was best read to mean "any." Dr. McDonald
14 failed to account for any of the race-neutral criteria in the
15 guidelines, and that's why his analysis was fundamentally
16 flawed. That is in no way the case here, where plaintiffs'
17 experts collectively address an account for the full range of
18 race-neutral criteria in the guidelines.

19 Notably, it is defendants' sole expert who fails to
20 address multiple factors and provides misleading incomplete
21 analysis. And it's not surprising that Mr. Trende omitted
22 multiple factors from his analysis, because that only mirrors
23 the shifting explanations that defendants have offered the
24 Court for what drives specific moves in the map. This brings
25 me to the chart that we discussed previously.

1 Second, I want to address defendants' claim that Dr.
2 Liu's and Dr. Ragusa's use of a county-envelope approach is
3 comparable to a line of analysis that the Supreme Court
4 rejected in *Cromartie II*. The defendants failed to mention
5 that the approach that Dr. Stephen Ansolabehere developed,
6 which is what Dr. Liu and Dr. Ragusa both explained they used,
7 was blessed by the Supreme Court in *Cooper*, as seen here at
8 the top left and as discussed earlier. The approach Drs. Liu
9 and Ragusa followed contrasts with the one Dr. Weber followed
10 in *Cromartie II*, an essential part, because and Dr. Liu and
11 Ragusa controlled for partisan advantage, and Dr. Weber
12 didn't.

13 Lastly, I'd like to address the last two major post
14 hoc arguments that defendants raised. The first is core
15 retention. As I mentioned earlier, it is just wrong to call
16 this a least-changed map. The plan moves more than 300,000
17 people into new districts and moves 190,000 people between
18 District 1 and District 6 alone. It changes the way District
19 6 approaches Charleston. It now goes through Dorchester and
20 West Ashley instead of Berkeley.

21 Second, core retention is largely selectively
22 applied. And to the extent it was, it's probative of racial
23 predominance; it doesn't disprove it. Defendants argue the
24 map tried to preserve district cores when speaking about
25 splits, like the one in Orangeburg, Richland and Sumter, but

1 claim they proactively sought to heal splits in places like
2 Beaufort and Berkeley. They also drew a brand new county
3 split in Jasper County. In essence, they healed splits that
4 brought together White communities and then leaned on core
5 retention when Black ones were left divided.

6 Third, as a legal matter, defendants over-rely on
7 core retention. It is a limited rationale that courts,
8 including the Supreme Court, have questioned. Core retention
9 only relates to past maps. It doesn't at all inform the new
10 district inhabitants. That's from *Alabama Legislative Black*
11 *Caucus*. And there are tens of thousands of new inhabitants in
12 the challenged districts. Core retention holds a special
13 place in predominance analysis, because it may be used to
14 insulate the original basis for district boundaries. That's
15 from the *Bethune-Hill* district court opinion.

16 Second, the Court should reject defendants'
17 characterization of the Milk Plan as a post hoc consideration
18 that merits no credit. Defendants never identified
19 Congressman Clyburn -- or his staff member, Dalton Tresvant --
20 as people who would have knowledge about drafting of the
21 enacted plan or their defenses against plaintiffs' claims.
22 When Senate staff unveiled its initial plan, Senator
23 Harpootlian directly asked Mr. Roberts on the Senate floor
24 whether members of congress had played a role in that map, and
25 his answer was, "Very little." I see from defendants'

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1 demonstrative that their defense here now is that it was
2 actually Mr. Fiffick who answered that question. I don't see
3 how the fact that Mr. Roberts's boss was the one answering
4 when Mr. Roberts was in the room and didn't correct him -- I
5 don't see how that's a good fact for them.

6 Several other witnesses, including Senator Campsen in
7 this courtroom, disclaimed the idea that Congressman Clyburn
8 had such an outside's role in the Senate plan. Senator
9 Campsen's testimony that was at the starting point for the
10 enacted plan was the 2011 plan, not Congressman Clyburn's
11 version of it. But more directly, witnesses like Mr. Andy
12 Fiffick, Mr. Terrine, all said nothing came of the meeting
13 with Mr. Dalton Tresvant. And that's at findings 606 through
14 607.

15 And lastly, there are significant and glaring
16 differences between the so-called Milk Plan and the enacted
17 plan, which we have in this slide.

18 And I will stop there, your Honor, because Ms. Aden
19 will address the second claim.

20 JUDGE GERGEL: Thank you.

21 MR. CEPEDA: Thank you.

22 MS. ADEN: Good morning again, your Honors.

23 Again, I'm Leah Aden with the Legal Defense Fund. I
24 will now speak about plaintiffs' intentional racial vote
25 dilution claim under the 14th and 15th Amendments. I also

1 plan to briefly touch upon the appropriate remedies for the
2 violations that plaintiffs have established.

3 As the Supreme Court in *Miller*, and even this Court
4 in *Backus*, have recognized, an intentional vote dilution claim
5 is analytically distinct from a racial gerrymandering claim,
6 involving a different legal framework and potentially
7 different remedies. It also means that this Court can find a
8 violation of racial gerrymander in CD 1, but also find that
9 the map overall points in a direction of intentional racial
10 dilution in places such as Richland and/or Sumter.

11 The intent claim is so because it asks whether the
12 law as a whole was adopted with a discriminatory purpose
13 designed to harm Black voters because of, and not in spite of,
14 its discriminatory impact. Plaintiffs only need to prove that
15 discrimination was a motive, not that it was the dominant one.
16 By comparison, as Mr. Cepeda detailed, a racial gerrymandering
17 claim asks whether race was the predominant factor in the
18 sorting of voters among districts. In determining whether a
19 legislative enactment was motivated by a discriminatory
20 purpose, *Arlington Heights* is our guide, and it instructs
21 courts to look at direct and/or circumstantial evidence.
22 Because the Supreme Court, this Circuit and this Court,
23 contrary to defendants' briefing and representations in its
24 demonstrative, simply do not expect in the 21st century for
25 outright admission of impermissible racial motivation.

1 *Arlington Heights*' factors includes various factors.
2 They are non-exhaustive. We can show a combination of them.
3 Failing to prove one or more is not dispositive, because the
4 assessment asks: Does the mosaic of evidence on the whole,
5 does it point toward the finding of intentional vote dilution
6 of Black South Carolinians through the enactment of S.865?
7 And as we detailed in our --

8 JUDGE GERGEL: Let me ask you this. You know this
9 law better than we do. Has *Arlington Heights* been applied in
10 legislative reapportionment -- state legislative
11 reapportionment cases?

12 MS. ADEN: Absolutely, your Honor.

13 JUDGE GERGEL: Which ones?

14 MS. ADEN: *Perez v. Abbott*, out of Texas, which we
15 cite in our post-trial briefing, a case in the last decade.
16 It had claims of racial gerrymandering. It had claims of
17 intentional racial vote dilution. And if you look in the
18 opinion, the Dallas/Fort Worth area was where the court looked
19 at racial gerrymandering and racial intent claims under the 14
20 and 15th Amendments. There were various districts challenged.
21 Some districts were challenged for racial gerrymandering, some
22 were challenged for intentional racial vote dilution. Some
23 were --

24 JUDGE HEYTENS: Did you just say that was a 15th
25 Amendment claim, not a 14th Amendment claim?

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1 MS. ADEN: The -- I don't think I just said in the
2 context of *Perez*. And I would have to go back and look, but I
3 know that it was at least brought as an intentional vote
4 dilution claim under the 14th Amendment. I'm not sure, the
5 15th Amendment. Courts are divided under whether
6 redistricting --

7 JUDGE HEYTENS: Can I just ask you -- I guess the
8 challenge I see is: If that's right, why can't any plaintiff,
9 whose *Shaw* plan fails because they can't make a predominance
10 showing, just repackage their claim as an *Arlington Heights*
11 claim, thus eviscerating this predominance requirement of
12 *Shaw*?

13 MS. ADEN: We don't see that happening, your Honor,
14 because *Arlington Heights* is a Supreme Court standard, it's a
15 separate framework. It's a different standard.

16 JUDGE HEYTENS: And maybe the reason it doesn't
17 happen is because people think you can't repackage your claim.

18 MS. ADEN: Or because it's a vigorous standard,
19 notwithstanding a different standard.

20 JUDGE HEYTENS: Okay. Give me an example where a
21 person's *Shaw* claim fails -- I'm just trying to -- it just
22 seems like it's a runaround the *Shaw* predominance requirement.
23 So, I guess I need an example of a case where a party whose
24 *Shaw* claim fails because they can't show predominance, also
25 can't make an *Arlington Heights* claim.

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1 MS. ADEN: I think *Perez* is a good example of that
2 because in the Dallas/Fort Worth district at issue there, they
3 could not establish that race was the predominant factor, but
4 the court looked at the evidence, and it showed that in that
5 case, just like here, where minority voters on the verge of
6 exercising power where they're perceived to vote a particular
7 way, where an incumbent is trying to maintain power, the lines
8 are drawn to stop that trend.

9 JUDGE HEYTENS: Sorry. That's not the example I'm
10 looking for. The example I'm looking for is a situation where
11 a person has a *Shaw* claim but they don't have an *Arlington*
12 *Heights* claim. What is that example?

13 MS. ADEN: That's plenty of the cases from last
14 cycle, like the *Cooper* and the *Bethune*. These are all cases,
15 pure racial gerrymandering claims, the weight of the evidence.
16 They do not bring *Arlington Heights* claims because they're not
17 talking necessarily about the historical discrimination.
18 They're not talking about -- which I was going to get to here,
19 which is that the showing of impact is very different for an
20 intentional discrimination claim. As I mentioned in the
21 opening, it doesn't require disproportionality. It doesn't
22 require statistical differences in Black voters being treated
23 one way as compared to other voters. It shows that the
24 overriding evidence shows that Black voters here, individuals
25 like the testifying witnesses -- like Mr. Griffin,

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1 Ms. Kilgore, Mr. Felder -- that these voters are harmed
2 overall by a map that makes no sense, given the natural
3 geography of the state, given the electoral voting patterns
4 that are known to the defendants. There is no way that you
5 would draw a map, given where people live and given the voting
6 pattern that looks like the one that they adopted, unless you
7 deal with the -- what the overall weight of the evidence does
8 is that you set up these principles that you say apply to
9 every one, but when you go down into the dirt, those
10 principles only apply when they help white voters, and they
11 don't apply when they hurt Black voters. And that is what the
12 overwhelming weight of the evidence here is.

13 So, I think you can look at the entire map, even if
14 -- we think we have persuaded you that the criteria that was
15 established in the redistricting process was not applied
16 across the board to all communities, but selectively apply --
17 and Mr. Cepeda detailed that. We think it was selectively
18 applied and there's harm in each of the challenged districts.
19 But you can also step back and look at the full weight of what
20 happened with the impact on Black voters in those areas and
21 across the whole map. You can look at the foreseeability of
22 that impact that was forewarned during the legislative
23 process. And it came to pass. You can look at the
24 legislative sequence of events that shut out minority members
25 that was secretive, where the explanations were hidden and

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1 they were not borne out by the facts on the ground. And you
2 can look at the fact that minority members do not support this
3 map. You can look at the historical record that every time
4 the State of South Carolina has an opportunity to redistrict,
5 they use Black voters -- they mistreat Black voters because of
6 the perception of how they're going to vote as a way to
7 maintain power. And you can look at the case law, and that
8 points in the favor of an *Arlington Heights* claim under the
9 14th and 15th Amendments. The sounds in the case of *McCrorry*,
10 the sounds in other cases that have found vote dilution under
11 the *Arlington Heights* framework, when all of the factors taken
12 together are shown.

13 The last factor I did not mention is all of the ways
14 that Mr. Cepeda detailed that partisanship, minimal change,
15 relying upon the lone Black legislature for justifying a map
16 that harms Black communities, even though there's very little
17 corroboration in the record that this map looks like anything
18 like Representative Clyburn suggested. All of that sounds the
19 alarm that this process was designed to take away the growing
20 power of Black voters where they live and the communities
21 where they vote, based on their race, based upon how they
22 vote. All of that was known, or should have been known, to
23 the defendants. And that is the result. It is not a
24 coincidence. It is a designed engineering scheme. And that
25 is what *Arlington Heights* is meant to uproot.

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1 I think I am at my time. Thank you, your Honors.

2 MR. GORE: One moment, your Honor.

3 JUDGE GERGEL: You know, Mr. Gore, there's a theory
4 that the gremlins in the courtroom always get those using
5 technology.

6 MR. GORE: I'll take that theory today.

7 JUDGE GERGEL: You take your time.

8 MR. GORE: Thank you.

9 Good morning, your Honors. I'm planning to take
10 around 45 minutes. So, if I can ask the timer to show me the
11 five minutes at about 40 minutes in, to leave time for the
12 House Defendants to address some House-specific points.

13 JUDGE GERGEL: I think we've pretty much concluded
14 the games where you are.

15 MR. GORE: Thank you, your Honor.

16 JUDGE GERGEL: Take all the time you need. I think
17 Mr. Moore doesn't have -- I'm going to be honest. I think
18 it's largely immaterial what's going on in the House, because
19 Will Roberts designed the plan, it was adopted by the Senate,
20 and then it was, you know, adopted in full by the House
21 without significant debate. It just struck me that the Senate
22 -- and this is where you focus your case, is on what happened
23 in the Senate. So, take as much time of that hour as you
24 want. You can explain to Mr. Moore later.

25 MR. GORE: I think you've just explained it for him,

1 your Honor.

2 We first want to thank the Court and our outstanding
3 court reporter, the staff -- the clerks, Mr. Rainwater and his
4 staff -- for their outstanding and diligent work during the
5 trial of this important case.

6 We go to slide two of our slide deck. This case is
7 very simple. The plaintiffs have failed to carry their
8 demanding burden on both of their claims. If we go to slide
9 three, the plaintiffs' evidence does not show subordination of
10 traditional districting principles to race, it doesn't show
11 that race rather than politics predominated, and it doesn't
12 show intentional discrimination. In fact, the evidence shows
13 precisely to the contrary. Plaintiffs are trying to
14 complicate this case with a lot of expert analysis and talk
15 about numbers. We had statistics and data, we had simulations
16 and ensembles. I thought maybe we'd get a simulation of an
17 ensemble. But the case is really very simple. It's just
18 about a map. It's about the congressional redistricting map
19 that the General Assembly drew and adopted after the 2020
20 Census. This is the map.

21 We go to the next slide. The evidence shows that the
22 reasons the General Assembly adopted this enacted plan were
23 first to comply with traditional districting principles,
24 including preserving cores, repairing county splits, and
25 repairing VTD splits; second, politics and partisan advantage,

1 particularly in District 1; and third, accommodating requests
2 from Senate and House members, Congressman Wilson and
3 Congressman Clyburn. This was not a plan based upon race.

4 We brought you the guidelines from the Senate and
5 House. Those are both based on prior case law from this Court
6 and the United States Supreme Court. They identified the
7 race-neutral principles and they specifically authorized the
8 General Assembly to consider political communities and data as
9 well as political beliefs and voting behavior. The enacted
10 plan is the best plan on preservation of cores. It preserves
11 more of the core of every district than every alternative the
12 plaintiffs have pointed to in the record. And as this Court
13 said in *Colleton County*, preserving district cores is the
14 clearest expression of respect for communities of interest.

15 We go to the next slide. The enacted plan repairs
16 county and VTD splits on the benchmark plan. It outperforms
17 the benchmark plan on both of these metrics. It also
18 outperforms both of the NAACP plans that the plaintiffs
19 proposed during the legislative process and we heard about at
20 trial.

21 Going to the next slide, we see that the enacted plan
22 respects communities of interest, maintains the communities of
23 interest from the benchmark plan. It respects political
24 communities of interest, including the Republican community in
25 District 1. It respects other communities of interest

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1 identified in the public testimony or from other sources. It
2 keeps Fort Jackson in District 2. That's the hook in Richland
3 County. It unites the Gullah Geechee Heritage Corridor and
4 the Sea Islands in Beaufort County. It unites Sun City, and
5 it moves the Limestone I and II precincts into District 2 with
6 neighboring Lexington County, based on public testimony. No
7 plan identified by the plaintiffs respects all of these
8 communities of interest.

9 Next, the enacted plan is contiguous and compact.
10 There seems to be some question about the use of water
11 contiguity in District 1, so let me address that. The Senate
12 guidelines allow the use of water contiguity to achieve other
13 objectives. Here, water contiguity was used to achieve those
14 objectives. One, it was through the use of natural and
15 geographic boundaries in Charleston area to draw the district
16 lines. Mr. Roberts testified to that here at trial. It also
17 allows certain communities of interest to be united. By using
18 water contiguity, all of coastal Charleston is able to be
19 placed in one district in District 1, and all of the
20 Charleston peninsula is placed in another district, in
21 District 6. Drawing the lines this way also achieved the
22 General Assembly's political goal of making District 1 more
23 Republican leaning.

24 Speaking of that, we've already mentioned that the
25 guidelines allow the General Assembly to consider politics,

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1 and on slide 12 we see that the enacted plan is the only one
2 that achieves that political goal. It is the only plan of all
3 the alternatives that were proposed by the plaintiffs, either
4 in legislation or litigation, to make District 1 more
5 Republican leaning. All alternatives proposed by the
6 plaintiffs make District 1 a majority Democratic district.

7 JUDGE HEYTENS: What's your response to the quote
8 that the plaintiffs had from Senate Rankin, where he flat-out
9 said that wasn't the goal of District 1?

10 MR. GORE: Senator Rankin said it wasn't a goal for
11 him, but that doesn't preclude it having been a goal for
12 others. And it was clearly a goal for Senator Campsen, as he
13 explained. He did deny on the floor of the Senate that it's
14 partisan gerrymander, but as he explained, the reason is that
15 the plan doesn't subordinate traditional districting
16 principles to race. He was very clear that he considered
17 politics at the time he was making instructions and directions
18 about the drawing of the enacted plan. In fact, what he said
19 was he could have made District 1 even more Republican leaning
20 if he had totally disregarded traditional districting
21 principles, but he chose not to do that. So, for example, he
22 said he could have split the Charleston peninsula and included
23 the battery, which is where we're convening today, in District
24 1 to make it even more Republican, but he didn't do that,
25 because he wanted to respect traditional districting

1 principles. And Mr. Roberts testified that he considered
2 politics, and so did Senator Massey.

3 We go to the next slide. The enacted plan is the
4 best incumbency protection plan. It's the only plan in the
5 record that maintains the 6-1 Republican/Democratic split, and
6 it keeps incumbents with their core constituents better than
7 any other plan. If we go to slide 14, we see that the enacted
8 plan is a product of a robust legislative process. In fact,
9 the General Assembly held hearings across the state. It
10 established special committees. It adopted redistricting
11 guidelines. It held subcommittee hearings, committee
12 hearings, floor debates, established websites, e-mail
13 addresses, and the Senate staff testified consistently -- and
14 it's been unrebutted -- that they would have drawn plans for
15 any senator who requested one. They drew several plans for
16 Democratic senators, including Senator Sabb and Senator Scott.
17 And as part of the Senate's confidentiality policy, they kept
18 those plans confidential from other senators unless they had
19 permission.

20 Let's look at what Lynn Teague said about the robust
21 legislative process. She said, quote, "I think the Senate did
22 a very fine job of organizing its hearings around the state.
23 I cannot recall anything that received as much process
24 attention, and I commended the Senate staff for their
25 responsible professional work."

1 Dr. Bagley, who's the plaintiffs' expert on the
2 legislative process, their putative expert, also agreed that
3 redistricting got more process in the General Assembly than
4 any other legislation and certainly in the mind run (*phonetic*)
5 of legislation.

6 Let's go to the next slide, slide 16. Your Honor
7 mentioned that Mr. Roberts came and testified. He said he
8 started with the benchmark plan upheld in *Backus*, because he
9 always starts with a benchmark plan when he draws a new plan.
10 He accommodated these requests from Senator Rankin, from
11 Congressman Wilson, and from Congressman Clyburn. He never
12 used race to draw any districts, and he used political data
13 instead to draw districts. Let's look at what the plaintiffs
14 have to say about this. Let's go to their slide 44, which is
15 on page 48. And they say something very interesting here.
16 So, this slide, if we scroll up a little bit higher, is
17 titled: Race Considered Overview. Now, Will Roberts, Senator
18 Campsen, Senator Massey, all other witnesses with firsthand
19 knowledge, denied that race was ever used to draw any lines in
20 the enacted plan. And they have no direct evidence that race
21 was used to draw any lines.

22 And so, they talk about whether race may have been
23 considered. That's an unremarkable proposition for several
24 reasons. Whether or not race was considered is not the
25 standard. The standard is whether race was actually used to

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1 draw lines, and if so, was it used in a way that predominated
2 over traditional districting principles or intentionally
3 discriminated. Mere consideration of race doesn't violate the
4 14th Amendment or even trigger strict scrutiny. The reason is
5 obvious. If mere consideration of race were enough, every
6 redistricting plan in the country would be a potential racial
7 gerrymander, because the census data always includes racial
8 demographic data, and legislators have some general awareness
9 of the demographics of the areas in which they draw lines.

10 So, none of these facts that they point to on this
11 slide, or elsewhere in their slide deck, establish that race
12 was actually used, let alone, that it was used in a way to
13 subordinate traditional redistricting --

14 JUDGE GERGEL: Mr. Gore, let me ask this. Senator
15 Campsen had testified that he started off wanting to put
16 Beaufort and Berkeley Counties into CD 1. And he had partisan
17 purpose for that, that he thought those were strong partisan
18 counties for his team, and that's what he wanted.

19 What effect did that have on the BVAP of the
20 district? If you put Beaufort and Berkeley together, what
21 effect does that have on the total population, BVAP, whatever
22 you'd like to use?

23 MR. GORE: Well, it's interesting you should ask that
24 question, your Honor. We do have a slide on that. But let me
25 just point out --

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1 JUDGE GERGEL: I saw the slide.

2 MR. GORE: -- the areas of Berkeley and Beaufort that
3 got moved from 6 to 1 had a higher BVAP percentage than
4 District --

5 JUDGE GERGEL: Well, I'm just talking about -- see,
6 it strikes me that when -- that by the time Mr. Roberts was
7 presented his task to draw a map -- if I understood the
8 sequence from Senator Campsen's testimony, was that they had
9 made a policy decision to include Beaufort and Berkeley whole.
10 In particular, around the Moncks Corner area, there is a
11 significant African-American population in Berkeley County.
12 And when you put those -- leaving Charleston out for a
13 second -- what you have is a BVAP around 20, 21 percent, okay?
14 Now, that is the task Mr. Roberts had to confront. He had to
15 finish out that plan to create a district that, according to
16 your data, was around 17 percent. It had a certain partisan
17 tilt; if it was 20 percent or higher, it had a different
18 partisan tilt, right? I mean, I think that's what your chart
19 stands for.

20 So, what does he do in Charleston County to bring his
21 -- to situate his number from 20 to 17, which is where he ends
22 up? And what he does is -- there were 48,000 African
23 Americans in CD 1 in 2011. How many ended up in CD 1?

24 MR. GORE: I'd be happy to answer those questions,
25 your Honor.

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1 JUDGE GERGEL: 18,000.

2 MR. GORE: Right.

3 JUDGE GERGEL: He took two-thirds out. Nine of the
4 10 largest boxes with a thousand or more African Americans got
5 moved out of CD 1, 80 percent. Charleston County was already
6 split racially -- 53, 52, 48 -- really to meet the
7 non-retrogression requirements of Section 5. That no longer
8 exists. But instead of saying, well, we're going to keep the
9 same or backing off, they go to 80 percent -- 80 percent -- in
10 one area and 20 percent in the other. And I studied the
11 precincts that were left. They were all small. One of the
12 plaintiffs' experts talked about look at the size of the
13 precincts. I did that. The 20 percent are scattered: St.
14 Paul's, Awendaw, James Island, in the middle of White
15 neighborhoods. He basically got every Black vote he could
16 reach.

17 And so, that's the scenario, as I understand it. And
18 I asked Mr. Roberts -- I'd figured it out already. And I
19 asked him. I said, those are dramatic changes in Charleston.
20 Yes. We talked about the Black movement. I said that's a
21 great disparity between 1 and 6. He said yes. He admitted
22 it. So, I think what we're struggling with -- at least, I can
23 speak for myself here -- is the dramatic -- as Roberts
24 described, himself, dramatic changes, abandoning least change,
25 abandoning Clyburn plan. And why does he do that? You know,

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1 there was talk about, oh, we were moving White Democrats. I
2 think you made that argument. If you run the numbers that you
3 provided us, White Democrats -- Whites did not, by a majority,
4 vote for a Biden, according to the numbers you gave. It was
5 the African Americans' 97 percent voting for Biden that
6 created those majorities. And you were actually moving more
7 Republicans into Clyburn's district. You were moving more
8 Trump voters -- I don't want to call them Republicans, they
9 could have crossed over. More Trump voters moved. So, it was
10 only the African-American vote that mattered. I mean, that's
11 the only thing that moved the needle. And we got to the end,
12 we went from 20 percent to 10 percent in CD 1. And that
13 dropped the BVAP from 20, where you didn't want to be, to 17,
14 where you want to be. And that looks like you were using
15 race -- you were using partisanship as a proxy for race. Race
16 is the tool used. That's the problem.

17 And I've got to say -- and I was giving the
18 plaintiffs a hard time about this -- I didn't try any of these
19 other districts. There's none of that gamesmanship in these
20 other districts. And I don't doubt that Senator Campsen could
21 design a plan that didn't have these problems, but they didn't
22 do it here. That's the problem here. When he wanted to put
23 Berkeley and Beaufort whole, that is perfectly legitimate
24 under the constitutional standard. Whatever his purpose was,
25 it was perfectly lawful. And I believe when he said it was a

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1 partisan purpose. It's obvious looking at it. And all this
2 denial that he didn't really talk about partisanship, they
3 probably didn't want to brag about it, but it's obviously
4 true.

5 But what was the tool, Mr. Gore? What was the tool
6 to accomplish that purpose? And I think that's what *Cooper*
7 teaches us, is you can't use race in that way to establish a
8 partisan purpose. I wanted to lay that out to you because I
9 wanted to give you a chance to reply.

10 MR. GORE: And I would like to address it. Let me
11 try to unpack it, because there's a lot going on --

12 JUDGE GERGEL: There is a lot going on.

13 MR. GORE: -- in what your Honor said.

14 So, first -- and I'll just complete the point here on
15 plaintiffs' slide 44. Racial predominance and racial
16 discrimination --

17 JUDGE GERGEL: How about I agree with you on this
18 point.

19 MR. GORE: Oh, okay. Thank you.

20 The analysis isn't exclusively about a -- it's an
21 intent question.

22 JUDGE GERGEL: It is an intent question.

23 MR. GORE: Was race actually used and was it used in
24 a way that predominated?

25 JUDGE GERGEL: And did it predominate?

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1 MR. GORE: And the consistent testimony of every
2 percipient or eyewitness was that race was not used, that it
3 was partisan data that --

4 JUDGE GERGEL: But they always -- I said this at the
5 beginning of the trial. I've never seen a case where people
6 admitted their racial intent. You've got to get it from
7 circumstantial evidence. And the closest I have seen in a
8 long time in one of these cases is Mr. Roberts's own
9 testimony.

10 MR. GORE: So, I respectfully disagree, because --

11 JUDGE GERGEL: I know you do. I figured you would.

12 MR. GORE: -- in *Cooper*, there was direct testimony
13 that race was used and predominated --

14 JUDGE GERGEL: Well, you didn't disagree with me
15 about what Mr. Roberts told me.

16 MR. GORE: Right. I don't agree with that. But I
17 will say that, in *Cooper*, there were statements, and the
18 legislature defended the *Cooper* plan on the basis that it
19 complied with the Voting Rights Act. They admitted that race
20 predominated in the *Cooper* plan. So, there have been recent
21 cases in which there has been an admission of the use of race
22 to predominate --

23 JUDGE GERGEL: It's rare.

24 MR. GORE: It may be rare, but it --

25 JUDGE GERGEL: And I, on the bench, have tried a lot

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1 of Title 7 and other cases, and no one every admits racial
2 intent. And so, you've got to look to the circumstantial
3 evidence. And the case law gives a lot of guidance about the
4 kinds of things we look for. And one of them is deviating
5 from your plan in a fundamental way, which is what Mr. Roberts
6 told me he did, that Charleston was the outlier different than
7 every other county, and that they had this problem. I
8 mentioned the 17 percent in my questioning to him, and he
9 acknowledged: If you had boxes more than 17 percent, that
10 created a problem to getting you to your desired number.

11 MR. GORE: But it only created a problem if that was
12 the reason the decision was made to include those boxes in and
13 around the district.

14 JUDGE GERGEL: You might tell me that nine out of 10
15 of the large boxes get moved, and that's just a coincidence.
16 You know, people who are involved in politics know where the
17 African-American vote is. I know Mr. Roberts very well. He's
18 helped me in a case I tried in this court. I've sat with him
19 at the computer. I know him. He knows these -- he probably
20 knows -- maybe other than Mr. Rainwater, he knows more at the
21 precinct level than any living person in South Carolina.

22 MR. GORE: Well, he testified that he didn't
23 necessarily know the BVAP --

24 JUDGE GERGEL: He answered my questions without
25 missing a beat about numbers.

CLOSING ARGUMENT BY MR. GORE

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1 MR. GORE: So, let me go back to our slide deck.

2 And can we pull slide 32?

3 We'll just walk through. And I think Districts 1 and
4 6 is where the real action is potentially in this case. I'll
5 just point out for the record -- and we've had this in our
6 slides in our findings of fact -- they're bringing these
7 allegations about Districts 2 and 5, but all the alternative
8 versions of 2 and 5 perform worse than the enacted plan. So,
9 let's talk about District 1 --

10 JUDGE GERGEL: Let's talk about District 1. I think
11 that's where you need to focus.

12 MR. GORE: I agree. So, let's talk about it here.
13 Slide 32, these are the numbers that really matter, because,
14 of course, what really matters is the net effect of all the
15 changes that were made between 1 and 6, not just Charleston,
16 Berkeley and Beaufort. Berkeley and Beaufort, what Senator
17 Campsen said, it wasn't his primary objective to include
18 Berkeley and Beaufort in District 1. I know that they've made
19 that assertion, but that's not what his testimony was.

20 JUDGE GERGEL: I understood -- I understood that --
21 there's a text message y'all put in that he announces in
22 December: We're putting Berkeley --

23 MR. GORE: Sure.

24 JUDGE GERGEL: -- and Beaufort whole. And, again, I
25 don't want to criticize that. I think that's a policy choice

1 the legislature can make.

2 MR. GORE: I was just pointing out, when he came to
3 trial, what he said was doing that wasn't his primary goal for
4 its own sake. That was a mechanism to achieve the political
5 goal, which was making District 1 more Republican leaning.

6 So, if we look at slide 32, here's what really
7 happened when you add up everything that happened in 1 and 6.
8 These are the most important numbers in the whole case.
9 Republican vote share goes up by 1.36 percent, and the BVAP
10 goes up slightly by .16 percent. So, the political effect of
11 these changes is much greater than the racial effect. The
12 fact that there's a small racial effect is consistent with the
13 notion that this was a least-changed plan and that it was a
14 least-changed plan all across the state. Mr. Cepeda showed
15 the statistics that the BVAPs more or less stayed the same.
16 Well, that's because it was a least-changed plan, only 6.5
17 percent of the total population.

18 JUDGE GERGEL: Mr. Gore, once you add Berkeley in --
19 and in particular, Berkeley in, you can't keep your racial
20 number at 17 percent unless you bleach Charleston. That's the
21 problem here. Nobody required them to put those counties
22 whole. But, in particular, Berkeley, which had 54,000 African
23 Americans, 23.7 percent of the population. That threw off --
24 and in Dorchester, y'all went and split a bunch of precincts
25 racially. Didn't have a huge number, but it did have some

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1 effect. But when you were left out in Charleston, Mr.
2 Roberts, who is a good man -- I don't want to criticize him --
3 he is left with a mathematical impossibility. How do you get
4 where they want to get with this BVAP they want when the rest
5 of the district is 20.41 percent African American? And if
6 they keep the same mix, they end up at 20 percent, they have
7 to go to 10 percent -- from 20 percent to 10 percent to get to
8 their 17 percent. That's the problem here.

9 MR. GORE: Let me unpack that a little bit, because
10 there were other changes that were made. I think your Honor
11 recognized there were changes that were made in Dorchester,
12 there were changes that were made in Jasper. And, of course,
13 the BVAP --

14 JUDGE GERGEL: And, by the way, I'm not talking about
15 Jasper. These are relatively --

16 MR. GORE: Okay. But Those are --

17 JUDGE GERGEL: Jasper's got 5,000 people, right?
18 Jasper is a very small number. This is the juice here: They
19 basically send 30,000 African Americans out of CD 1, 30 of the
20 48,000, nine out of the 10 largest boxes, out. You know, I've
21 kidded with my colleagues, there's an old statement that when
22 you see a turtle on top of a fence post, you know someone put
23 it there. And, you know, this is not an accident.

24 MR. GORE: I think it is the byproduct of a couple of
25 things: Pursuing the political goal, also following the

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1 natural geographic boundaries. The mapmaker's not responsible
2 for where people live demographically within the district, and
3 when he follows the boundaries, that's what happens in
4 Charleston. But, again, there's movement from other counties
5 into District 1 of higher BVAP areas.

6 Let's take a look at our slide 33, what got moved
7 from 6 to 1 versus what got moved from 1 to 6. The stuff
8 moved from 6 to 1 has both a higher Republican percentage and
9 a higher BVAP percentage than what was moved from 1 to 6. If
10 what they were trying to do was bleach District 1, why did
11 they move a higher BVAP percentage area into one than they
12 moved out of 1? This is where it starts to break down. If
13 you look at the aggregate numbers of all the shifts, not just
14 Charleston County, but you incorporate Beaufort and Berkeley,
15 what happened in Dorchester, what happened in --

16 JUDGE GERGEL: Well, why did they take a meat axe to
17 Charleston? Because the other choices they made, which were
18 perfectly proper, left them with no tool, other than race, to
19 eliminate the district -- to create the 17 percent they were
20 seeking. That's the problem here. And you're asking us to
21 say, okay, because they made these other choices, they get a
22 freebie. And --

23 MR. GORE: No, sir. I'm disputing the premise that
24 they trying to get to 17 percent, or that they used race to
25 draw the district. And these numbers show that they weren't

1 using --

2 JUDGE GERGEL: If they were using 17 percent, would
3 you agree that's a target that would be --

4 MR. GORE: Absolutely not. There was no racial
5 target in --

6 JUDGE GERGEL: If there was, would that be a problem?

7 MR. GORE: I think that there is -- there's case law
8 that says using a racial target is a problem. But using a
9 racial target doesn't necessarily mean that race predominated
10 anyway. There are some districts that could be drawn -- you
11 could imagine districts in certain areas of the country that
12 are drawn with a racial target, and it doesn't matter because
13 the traditional districting principles would yield the same
14 district.

15 JUDGE GERGEL: Do you think the movement of 30 of the
16 48,000 African Americans out of Charleston, from CD 1 to CD 6,
17 was an accident or coincidence?

18 MR. GORE: I think it was a byproduct of drawing the
19 district lines based on politics and the moves that were made
20 in other parts of District 1 in order to maintain equal
21 population and achieve the General Assembly's political goal.

22 Let's look at slide 34. We talked about this
23 already, but just to drive home that the BVAP is higher in the
24 areas moved into 1 and moved out of 1. Look at Beaufort
25 County, the portion that's moved in was 42.66 percent BVAP.

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1 Look now to Berkeley County. Berkeley County is also made
2 whole, and the BVAP, or the portion that's moved in, is far
3 greater than the BVAP in District 1. Why move the Berkeley
4 County African-American voters in if you could just keep the
5 Charleston African-American voters --

6 JUDGE GERGEL: Because they wanted the more
7 Republican Berkeley and Beaufort County in the district, which
8 was perfectly legitimate. But when they did that, coming
9 along are African Americans, and they need to deal with
10 Charleston to fix it. That's the reason you get into trouble.
11 It was a certainly proper initial choice, but then it left the
12 mapmaker with no choice but to bleach Charleston to make it
13 work. That's the problem.

14 MR. GORE: Let's walk through the rest of these
15 slides, because I think it refutes that notion.

16 So, Berkeley County, itself, has a higher BVAP
17 overall than Charleston County. One of their main arguments
18 is that the failure to unsplit Charleston County in District 1
19 somehow shows racial predominance. But they unsplit Berkeley
20 County in District 1, which has an even higher BVAP. Let's go
21 now to what happened in Charleston. Again, what moved from 6
22 to 1 had a higher BVAP than what moved from 1 to 6.

23 If we scroll down to slide 37, we see that there's a
24 BVAP disparity. So, if you take each portion of Charleston
25 County, the portion that's in District 1 and the portion

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1 that's in District 6, the BVAP level of each those portions
2 has shrunk over time, and the disparity between the two has
3 shrunk over time. So, for example, in 2010, what was District
4 6 was almost 50 percent BVAP, almost half of the voting age
5 population was Black, but only 18 percent in the District 1
6 portion. Under the 2020 data, that disparity had shrunk. Now
7 the portion that was in District 6 had gone down to 41 percent
8 BVAP, and the portion in District 1 had gone down to a little
9 over 14 percent.

10 Look what happens in the enacted plan. There are
11 demographic changes happening in Charleston. The District 6
12 portion that's now -- left Charleston that's now in District 6
13 is only 31 percent BVAP, whereas a decade ago, it was almost
14 50 percent. Now what's in District 1 has gone down to 10
15 percent. The disparity between those portions keeps getting
16 smaller as the district lines are redrawn.

17 So, the Court seems to be focusing on this 80-percent
18 number, but look at what's happening to the relative
19 populations in those areas, the BVAP number keeps shrinking in
20 unequal ways, but in ways that shrinks the disparity between
21 those two populations. And look at what happens here in
22 Charleston portion of CD 1 at the bottom, it becomes more than
23 three percent less Democratic. That's the political goal.
24 The political goal is to shed Democrats from District 1, moved
25 into District 6. And this really boils down to West Ashley

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1 and some other portions of the county. West Ashley is a
2 57-percent Democrat area, but only 19 percent BVAP. So, when
3 West Ashley is moved out of District 1 into District 6, it
4 makes District 1 significantly more Republican, compared to
5 that population --

6 JUDGE GERGEL: But you're not arguing that the White
7 voters were predominantly Democratic, are you?

8 MR. GORE: In a 19-percent BVAP area that has a
9 57-percent Democratic vote share, there are a lot of White
10 Democrats in that area. There's no question about that.

11 JUDGE GERGEL: But it's predominantly a Trump vote --
12 I think you all were using Trump/Biden. And I believe you can
13 discern very easily that, predominantly, the White voters were
14 Trump supporters, but combined with the African-American
15 supporters, that is what makes it Democratic, correct?

16 MR. GORE: I don't have the numbers on turnout in
17 front of me, so I don't know. But there's certainly a
18 significant number of White Democrats --

19 JUDGE GERGEL: No. There are, but they're just less
20 than 50 percent. So, you're not going to increase the tilt --
21 getting rid of Democrats doesn't solve the problem, the goal
22 is to get the African-American voters out. That's the one
23 that moves the partisan line.

24 MR. GORE: But the White Republican vote is also less
25 than 50 percent in West Ashley, because the total Republican

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1 vote in West Ashley is only about 43 percent. If it's a
2 57-percent Biden area, it's only a 43-percent Trump area.
3 When you move that out of District 1 and bring more heavily
4 Republican areas into District 1, that unbalance makes
5 District 1 a more Republican-leaning district. And that's
6 precisely what happened here. And that was the consistent
7 testimony of Mr. Roberts, of Senator Campsen, and of Senator
8 Massey. Senator Campsen didn't even look at race data while
9 the plan was being drawn. He only looked at it later to
10 defend the plan against challenges of racial gerrymandering,
11 and he discussed the BVAP numbers on the floor of the Senate
12 and in the hearings both on January 19th and on January 20th.

13 Mr. Traywick, let's go back to our slide number 17
14 and just drive home yet another flaw in the plaintiffs' theory
15 of the case.

16 And we've talked about this already. The plaintiffs'
17 claims simply do not add up. They're claiming three sets of
18 district lines, all of which involve District 6. They're
19 challenging the line between 1 and 6, the line between 2 and
20 6, and the line between 5 and 6, but they don't challenge
21 District 6. So, to the Court's question about what's going on
22 in Charleston, they're not challenging the District 6, half of
23 the equation, they're only challenging Districts 1, 2 and 5.
24 But if District 6 is not the product of a racial
25 gerrymandering intentional discrimination, the mirror image

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1 side of those lines can't be either. Given the claims here,
2 one would think that District 6 is triple infected with racial
3 predominance and discrimination, because it's involved in all
4 three of these sets of lines that they challenge, but they
5 don't challenge that district at all. And they talked a lot
6 about District 6 again today.

7 JUDGE GERGEL: But wouldn't District 6 be under a
8 voting rights analysis to allow African Americans to elect a
9 candidate of their choice, where race would be permissible to
10 be used that's unlike these other districts?

11 MR. GORE: But there's no Section-2 claim or defense
12 in the case. There's no argument that --

13 JUDGE GERGEL: But -- but I agree to they didn't
14 challenge it, because it was consistent with the Voting Rights
15 Act. They're not obligated to go bring a change -- you know,
16 obviously under the 14th Amendment, you have a compelling
17 state interest to defend it, and one of them would be
18 complying with the Voting Rights Act, right?

19 MR. GORE: Certainly. But that's not a defense --

20 JUDGE GERGEL: But just because they didn't challenge
21 District 6 doesn't make other districts that don't have the
22 protection of the Voting Rights Act legally defensible.

23 MR. GORE: I want to be careful about what I say
24 here, because District 6 certainly complies with the Voting
25 Rights Act, as we believe the entire plan does, there's no

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1 Voting Rights Act claim. But we haven't asserted Section 2 as
2 a defense to a predominant use of race, because there was no
3 predominant eyes of race. But my point is --

4 JUDGE GERGEL: Let me ask you this. You don't claim
5 that there was any compelling state interest -- if race were
6 determined to predominate, have you asserted a compelling
7 state interest for use of race?

8 MR. GORE: No, we haven't, because we don't believe
9 race did predominate.

10 JUDGE GERGEL: Okay.

11 MR. GORE: What I actually think is going on here is
12 something a little bit different. They've challenged the
13 Districts 1, 2 and 5 side of the line, but not the mirror
14 image in District 6. And I think the reason is this case is
15 really a collateral rather than a direct attack on *Backus*. In
16 *Backus*, the Court upheld District 6 and all District 6's
17 lines, and haven't come and asked the Court to reverse
18 itself -- or the Supreme Court -- and strike down District 6.
19 Instead, they're trying to backdoor around it. They're trying
20 to challenge 1, 2, and 5, the mirror image side of the lines.
21 But these are the same lines -- at least the benchmark ones
22 that didn't change, those are the same ones that the Court
23 upheld in *Backus*. And so, their claim simply doesn't make any
24 sense. How can you challenge one side of the line but not the
25 other? They haven't challenged District 6, and they haven't

1 explained why they haven't challenged District 6 either.

2 We've already talked about slides 18 and 19, so we
3 won't belabor the point. But their versions of District 2 and
4 District 5 performed worse than the enacted plan version,
5 accept for Harpootlian's version of District 5. But that also
6 doesn't create an electoral opportunity for Black voters.

7 Let's go now to slide 20. And we've talked about
8 this before, too. What they're really seeking is a cross-over
9 district. They want a district where African-American
10 Democrats and White Democrats get together and can elect the
11 candidates of their choice. This really boils down to West
12 Ashley, Ladson and Deer Park and Lincolnville to a lesser
13 extent. But what they really want is to move West Ashley and
14 those areas back into District 1 so that White Democrats and
15 Black Democrats can form a coalition to elect candidates of
16 their choice. There's no constitutional right to that kind of
17 district. There's no constitutional right certainly in the
18 14th Amendment prohibition on racial discrimination to form
19 political coalitions. And the General Assembly's decision not
20 to place Black Democrats and White Democrats together had
21 nothing do with race, it was politics.

22 Let's go to slide 21, which may be one of the most
23 important slides of the entire day. There's been a lot of
24 confusion about what happened in *Backus* and what happened with
25 the benchmark plan. The plaintiffs have repeatedly asserted

1 and represented that the benchmark plan was drawn as a
2 race-conscious plan to comply with Section 2 and Section 5.
3 That's not what the Court held in *Backus*. What the Court held
4 in *Backus* was that the plaintiffs in *Backus* not only failed to
5 prove subordination of traditional districting principles,
6 but, in fact, that the defendants disproved that because they
7 showed that there was compliance with traditional districting
8 principles. So, when Mr. Roberts started drawing the map
9 based on the benchmark plan, he was drawing from a map that
10 had been blessed as compliant with traditional districting
11 principles.

12 The challenge in *Backus* was to District 6. What this
13 means is that the Court concluded that District 6's lines in
14 the benchmark plan were constitutional and complied with
15 traditional districting principles. Also, all the county
16 splits in District 6, the Court concluded complied with
17 traditional districting principles. All the VTD splits, the
18 core and shape of District 6 under the benchmark plan, the
19 Court concluded that all of that was consistent with
20 traditional districting principles. It never examined whether
21 there was a use of race. It never examined whether District 6
22 had to be upheld under strict scrutiny, because that wasn't at
23 issue. It's certainly true that the defendants put on that
24 defense in the alternative defense, but what the Court
25 actually held was that there was no predominant use of race,

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1 and that the plan complied with traditional principles.

2 Now, they've pointed out that there were challenges
3 to other districts that were dismissed for lack of standing in
4 *Backus*. But all the districts they challenged here involved
5 lines with District 6 that were upheld. If they were
6 challenging District 1's line with District 7, *Backus* might
7 not apply -- or District 2's line with District 5, or District
8 2's line with District 3. What they're challenging is all
9 those districts' lines with District 6, the district that was
10 judicially blessed in *Backus* as compliant with traditional
11 districting principles. So, their challenges to any of the
12 lines that the enacted plan inherited from the benchmark plan
13 fails under *Backus*.

14 Let's talk about the changes that --

15 JUDGE HEYTENS: Can I just ask one question on
16 *Backus*? I know because the Supreme Court summarily affirmed
17 we're bound by the sort of bottom line, but we are not bound
18 by every word of the *Backus* opinion, right? That's just --
19 that's a district court opinion that is not binding on
20 subsequent forms. People have been treating that case like
21 it's a Supreme Court decision, and it's not, right?

22 MR. GORE: Well, I think it does carry some
23 precedential weight. Of course, it's a decision from this
24 Court, itself.

25 JUDGE HEYTENS: Sure. And, Mr. Gore, you and I are

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1 both aware that the decision of a district court does not bind
2 the subsequent district court in any -- at all, right?

3 MR. GORE: I believe that is correct. But I do think
4 that *Backus* is very persuasive. And on the intent question, I
5 think it's extremely instructive. Because, of course, Mr.
6 Roberts started with the benchmark plan that had been upheld
7 as compliant with traditional districting principles. That
8 certainly indicates that his intention was to continue and
9 perpetuate that compliance rather than to do something racial,
10 which --

11 JUDGE GERGEL: Mr. Gore, I think at the beginning of
12 the case, I asked you that obviously the legislature in this
13 round had significantly reduced the BVAP in CD 6.

14 MR. GORE: Sure.

15 JUDGE GERGEL: And part of that -- when there was no
16 racial polarized voting study, but there was a belief that the
17 district remained effective around 47 percent, correct? And
18 had it come in with a district that was 56 or 57 percent
19 African American, as the previous that existed, without a
20 showing, that would have been subject to a potential packing
21 claim, would it not?

22 MR. GORE: I completely agree.

23 JUDGE GERGEL: I mean, I thought you acknowledged --
24 and I thought it was proper for the legislature to do it --
25 was not to continue running those. CD 6 did not need that

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1 kind of number to be effective, correct?

2 MR. GORE: That's correct. And I think there's
3 another --

4 JUDGE GERGEL: So, locking onto *Backus* as the holy
5 grail has a problem, because *Backus*, today, wouldn't be
6 constitutional.

7 MR. GORE: So, I -- I don't agree with that, because
8 *Backus* was upheld on the basis that it complied with
9 traditional districting principles. So --

10 JUDGE GERGEL: Well, if you had a 56-percent
11 African-American district with no racial polarized voting
12 analysis, and you couldn't demonstrate you needed that kind of
13 packing, that would be a problem. I don't want to criticize,
14 but the legislature didn't do that in recognition of that.
15 And that's what I asked you right at the beginning of the
16 trial. I said: Wasn't that change related to a recognition
17 of the impact of *Shelby County* and on the impact of *Cooper*? I
18 mean, you couldn't get away with it today.

19 MR. GORE: Well, let me unpack that a little bit,
20 because I think your Honor is asking about the second step of
21 the racial predominance analysis, which is strict scrutiny and
22 compliance with the Voting Rights Act. I think that *Backus*
23 didn't ever get to that step. *Backus* upheld the district as
24 complying with traditional districting principles. Let's take
25 an example. If you have a demographic area that was

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1 80-percent African American, if you drew based on traditional
2 districting principles, you'd have a very high BVAP in that
3 district, but you wouldn't have to justify under the Voting
4 Rights Act because it's a natural --

5 JUDGE GERGEL: This district was far flung. It goes
6 from Columbia to Florence down to Charleston. You know,
7 there's little doubt that what motivated the legislature and
8 was part of y'all's defense was you were trying to comply with
9 the Voting Rights Act. And, frankly, I'm not sure you needed
10 that much vote, but you needed a significant vote to avoid
11 retrogression. But that game was over by 2020, and the
12 legislature recognized that.

13 So, to me, to come in and say the holy grail is
14 *Backus*, you know, hold on a minute, the legislature didn't
15 follow *Backus* literally, and certainly didn't follow it in
16 Charleston County.

17 MR. GORE: And let me just make one other point about
18 District 6 while we're on that. The other issue to keep in
19 mind is that District 6 was severely underpopulated under the
20 benchmark plan. And so, the reduction in BVAP percentage --
21 there's actually an increase in the total number of Black
22 individuals of voting age in the active district --

23 JUDGE GERGEL: The White population grew faster.

24 MR. GORE: But extra population needed to be added to
25 comply with one person, one vote. So, they keep saying there

1 was extra BVAP to spread around, and that's simply not the
2 case. BVAP actually had to be added to District 6, not for
3 that purpose, but with the result of the 47-percent district.

4 So, the changes that were made by the enacted plan
5 also were constitutional and complied with traditional
6 districting principles. We have several slides on that. In
7 the interest of time, I'll just note those for the record.
8 They start on slide 22. And we walked through this with Mr.
9 Roberts during his testimony, as the Court is well aware. But
10 for each of these, Mr. Roberts articulated a race-neutral
11 explanation as to why the changes were made. So, I'll just
12 note that those are slides 22 to 31, and they're also in our
13 proposed findings of fact. And there's been no real
14 reputation of Mr. Roberts's testimony on that particular
15 point.

16 Let's go to plaintiffs' slide 6, if we can, for just
17 a moment, because this is something Mr. Cepeda talked about
18 today when he was talking about the districts and treatment of
19 districts in the enacted plan. This is his list of high BVAP
20 counties. Now, they note that the data was presented
21 incorrectly on pages 30 and 169 of their proposed findings.
22 But let me just make a couple of points about this list.

23 There are nine counties listed here. Eight were
24 split in the benchmark plan, only seven are split in the
25 enacted plan. So, the enacted plan actually treats these

1 counties better than the benchmark plan. Plaintiffs haven't
2 presented any evidence on four of these counties: That's
3 Greenville, Spartanburg, Florence and York. That leaves the
4 other five counties: That's Richland, Charleston, Berkeley,
5 Orangeburg and Sumter. All of those were split in the
6 benchmark plan along the line with District 6. The *Backus*
7 Court upheld all of those splits as complying with traditional
8 districting principles.

9 There are two other points to make here. One is that
10 this chart doesn't control for total population size. We've
11 heard testimony in the record that counties with large total
12 population are commonly split to achieve the
13 one-person-one-vote requirement of the Federal Constitution.
14 Greenville, Richland, Charleston and Spartanburg are four of
15 the five largest population counties in South Carolina.

16 The second point is that they're using, again, total
17 BVAP numbers rather than BVAP percentages. The percentages
18 are more instructive because they travel with the total
19 population of the county as it's moved in and out. There's
20 only one of the top eight BVAP percentage counties in South
21 Carolina that's split, that's Orangeburg County. But
22 Williamsburg, Lee, Bamberg, Marion, Fairfield, Hampton and
23 Marlboro are not split. And those are the other seven of the
24 eight highest BVAP percentage counties in South Carolina.

25 Let's go to plaintiffs' slide 20. And here in

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1 plaintiffs' slide 20, there was discussion about some talking
2 points that were prepared by the staff. And it said in these
3 talking points: County lines are more important in some
4 places than others. Well, I just want to cite the Court to
5 Senator Campsen's testimony on the stand on this point. It's
6 on page 118 and 119 of the October 13th afternoon transcript.
7 He said that was not his view. He said that was staff's view,
8 he didn't subscribe to that view and he didn't act upon that
9 view. The plaintiffs have no evidence that any senator agreed
10 with this view or acted upon it with respect to any action
11 taken on the enacted plan. What we do know is that Senator
12 Harpootlian instructed Mr. Oppermann to prioritize, as his top
13 priority, moving Charleston County into District 1 and
14 unsplitting it there. So, at least for some other individuals
15 involved in the case, county lines were more important in some
16 places than others.

17 Let's go to slide 34, if we can. Slide 34 is another
18 one about counties. And it talks about the split of
19 Orangeburg County and contrasts that with Edgefield.

20 JUDGE GERGEL: You're under your 15 minutes. But
21 you're fine. Keep going.

22 MR. GORE: Thank you. Let me just try to finish up
23 briefly, if I might.

24 There are a couple of other points that we think are
25 important for the Court to understand. One is we ask the

1 Court to scrutinize very closely some of the assertions and
2 representations that have been made by the plaintiffs with
3 respect to the evidence at trial and the implications of that
4 evidence.

5 We found many misrepresentations in many places where
6 the transcript doesn't comport with what is in their proposed
7 findings of fact or in their slide deck today. Let me give a
8 few examples. If we can go to their 45, this is where they
9 talk about Senator Campsen. None of this testimony appears on
10 pages 48 or 104 of the transcript. And it's an incomplete
11 citation of Senator Campsen's testimony. Senator Campsen
12 said, in fact, that he has a general awareness of the
13 demographics of his district, he doesn't know any percentages
14 of any cities or any areas, he doesn't even know the BVAP
15 percentage of his district, and he doesn't know if other
16 senators do either. So, they're saying that he considered
17 race, when what he said is he just has a general understanding
18 of what the demographics are in his particular area.

19 Let's go to Plaintiffs' 51, where again, there's talk
20 about whether legislators used partisanship or considered
21 politics. We've already talked about Senator Campsen and his
22 explanation on the stand about partisan gerrymandering and how
23 that's a legal term of art. If we go to slide 52, there's
24 this arrow that's alleging that Senator Campsen gave
25 inconsistent and misleading statements. This testimony

1 largely is not anywhere in the record. Let's start with the
2 first one. They say he falsely claims that Columbia and
3 Charleston had been in the same district since the 90s.
4 That's not what he said. That's not on page 11 of that
5 transcript and it's not anywhere in that transcript. What he
6 said was that one of his objectives was maintaining the
7 district as it had existed since the 1990s.

8 Let's go to the next one. Falsely claims that CD 6
9 was least changed and misrepresents the number of Black
10 voters. The enacted plan is a least-changed plan. It changes
11 the lowest number of voters of any plan in the record,
12 including the plan they're now charting out from Dr. Duchin.
13 And he didn't say anything about the number of Black voters
14 that were moved under Senate Amendment 1 in this transcript.
15 It's simply not there.

16 The next one stated that redistricting principles
17 carry equal weight. He did believe that had and he said that
18 discretionary principles could be treated equally.

19 The next one, he never denied that this was a
20 least-changed plan. He said that creating a least-changed
21 plan was one of the most important factors that animated
22 Amendment 1. And so, there was no reversing course when he
23 said that Senate Amendment 1 is a minimal-changed plan. He
24 also never said that having Beaufort and Berkeley in
25 Congressional District 1 was a primary goal. He said it

1 wasn't a primary goal. He said it was something he did to
2 achieve his political objective.

3 So, let's go down, if we can, Mr. Traywick, to our
4 slide 99.

5 And, again, we ask the Court, as we know it will, to
6 scrutinize the record closely, as we were unable to even find
7 in the record some of the assertions that are made in their
8 findings and their slide deck. But to rule for the
9 plaintiffs, the Court would have to do a number of things that
10 would interject error into the case; it would have to ignore
11 the presumption of good faith, ignore the undisputed evidence
12 presented by Mr. Roberts and others of compliance with
13 traditional principles; it'd have to jettison *Backus* twice; it
14 would have to reject the benchmark lines, which comport with
15 traditional principles; it would have to embrace incomplete
16 and unconvincing putative expert analyses; it would have to
17 conclude that Mr. Roberts, Senator Campsen, Representative
18 Bamberg, Senator Massey and others all lied about whether they
19 used race in the plan; it will have to adopt
20 misrepresentations in the record and hold that not drawing
21 lines based on race is racial discrimination.

22 The 14th Amendment directs the General Assembly to
23 make race-neutral decisions. That's what the General Assembly
24 did. It did not use race to draw lines. It used politics and
25 traditional districting principles, honoring the requests of

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1 others, to draw lines. Plaintiffs are asking the Court to
2 turn the Fourteenth Amendment's prohibition on race-based
3 decision making into a prescription to consider race in
4 exactly the way plaintiffs think it should be considered. The
5 Court should decline that invitation and should enter judgment
6 for the defendants.

7 JUDGE GERGEL: Thank you, Mr. Gore.

8 MR. MOORE: May it please the Court. Given the fact
9 that I have a little more than five minutes, I'll ask for you
10 to give me -- actually it's nine minutes.

11 JUDGE GERGEL: I wouldn't have told you that myself.

12 MR. MOORE: I'm not going to bore the Court with a
13 dissertation about Representative King, and I'm sure you'll
14 appreciate that.

15 As your Honor said -- and said very clearly -- this
16 is a Senate plan, okay? It's a Senate plan that the House
17 concurred with. And the House concurred in that Senate plan
18 for one reason and one reason only. And I don't have time to
19 go through all these demonstrative slides. You have them in
20 front of you. And as Mr. Gore said, I know that all of the
21 members of this Panel are going to carefully scrutinize the
22 record in this case.

23 But, you have clear evidence that the only reason
24 that the House concurred in the Senate plan was for political
25 purposes, political reasons. The text messages themselves,

1 which are discussed in this slide deck, contemporaneous with
2 the activities of those House members, conclusively proves
3 that the House goal was the same goal as the Senate goal,
4 which was a political goal.

5 And some of the points that I heard your Honor make
6 with respect to circumstantial evidence is obviously
7 circumstantial evidence is helpful and it's appropriate. And
8 as your Honor said, frequently, people don't testify that they
9 took race into account. But one of the things that we do look
10 at when we look at someone's intent is we look at
11 contemporaneous statements of that person, and things like
12 text messages which are exchanged between people who are
13 friendly, who are often unguarded. And when you look at the
14 text messages that have been introduced in this case -- and
15 your Honors may remember we had a large dispute about these
16 text messages and whether we could get into them or not, and
17 whether the plaintiffs would be allowed to collect them from
18 legislators or not -- the plaintiffs were allowed to collect
19 those text messages. And guess what? None of those text
20 messages demonstrated that the evidence that they sought,
21 which was evidence of discriminatory intent. In fact, it
22 demonstrated quite the contrary.

23 And so, when you look at circumstantial evidence,
24 your Honors, I think you have to first realize -- in this case
25 as a whole -- there is no direct evidence of discriminatory

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1 intent here. And *Arlington Heights* says -- and other courts
2 have indicated -- that direct evidence is preferable, is
3 stronger than circumstantial evidence. And, here, the
4 circumstantial evidence is not strong, it is belied by the
5 direct evidence. And I want to briefly touch on a point that
6 Mr. Gore made, which is the plaintiffs' proposed findings of
7 fact are replete with errors, okay? We don't have time to go
8 over all of those, because if we did, we'd take hours and
9 hours. Why are those proposed findings replete with error?
10 Because they realize they don't have a strong case. They
11 realize that the evidence in this case does not support their
12 claims, and so they mischaracterize what the evidence is.

13 I want to talk very briefly about a couple of points,
14 your Honor. If you'll just give me a moment, because I am
15 trying to slash and burn.

16 The plaintiffs have not presented any alternative
17 plan here, okay? And we haven't heard about that at all from
18 anyone. They haven't presented an alternative plan that would
19 accomplish or allow the legislature to accomplish the same
20 purpose, its political purpose. And as courts have held in
21 *Cooper* in *Cromartie* and in other cases, such an alternative
22 plan can provide substantial evidence. We don't see that
23 here. Now, I understand that, in *Cooper*, the Court did not
24 require, you know, evidence of an alternative plan, but the
25 evidence in *Cooper* was much stronger on the issue of racial

1 intent than the evidence in this case. And so, the fact that
2 the plaintiffs have not provided an alternative plan that
3 would show that the legislature could accomplish its same
4 political purposes, and not do what the plaintiffs would have
5 it not do, is glaring and is appropriate.

6 If you look at slide 10 for just a moment, you see
7 sort of the Trump/Biden votes with respect to House plans, the
8 benchmark plan, and the other alternative plans that have been
9 discussed here. It is clear when you look at that data that
10 the only way for the legislature to accomplish the political
11 purposes that it had, particularly with respect to CD 1, is to
12 do what it did. If you look at the League of Women Voters'
13 Plan, the NAACP ACLU 1 and 2, and the Senate Amendment 2,
14 which is sponsored by Senator Harpootlian, it clearly
15 demonstrates that you would not have the same effect of
16 keeping CD 1 red if you adopted those plans. And I think that
17 is an important thing for your Honors to consider.

18 You know, there are a couple points where I feel like
19 I have to take up for folks from the House who testified just
20 for a moment. If you look at slide 14, I don't know why the
21 plaintiffs chose to characterize Senator Jordan's testimony as
22 "lying." It seems, to me, to be a bit extreme. And I think
23 that the evidence shows that Chairman Jordan didn't lie at the
24 January 10th, 2022, committee meeting. And any suggestion
25 that he lied is not only insulting but demonstrates that the

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1 plaintiffs, in desperation, are resulting to character
2 assassination. And we have pointed out what Chairman Jordan
3 did and why he did it.

4 Another point is, again, Chairman Jordan is not the
5 only victim of character assassination here. The worst
6 example of this relates to Representative Justin Bamberg. And
7 while it wasn't covered in their closing, in a footnote to
8 paragraph 627 of their findings of fact, they asked this Court
9 to find that Representative Bamberg, an officer of this Court,
10 is not a credible witness. Why'd they do that? One can only
11 guess. I would suggest here, they chose to make Senator
12 Bamberg a witness in this case because they chose to depose
13 him; they didn't like what he said, and now they've decided to
14 resort to character assassination.

15 JUDGE GERGEL: Mr. Moore, Representative Bamberg told
16 us he didn't know anything about the Senate plan.

17 MR. MOORE: Well, that was going to be my next point,
18 your Honor.

19 JUDGE GERGEL: So, this whole point about all this
20 House stuff just strikes us as odd because it's immaterial.
21 The word is "immaterial" to the case.

22 MR. MOORE: I would agree with your Honor.

23 JUDGE GERGEL: I don't want to hear Representative
24 blank -- starts with a K -- again, because we must've heard it
25 40 times during the trial. It's not material to the case.

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1 MR. MOORE: I agree, your Honor. I mean, if -- since
2 Representative Bamberg's testimony is not material to the
3 case, because he testified under oath he didn't know anything
4 about the senate process, wasn't involved in the senate
5 process as well. Then there's no reason to argue that
6 your Honor should find him not credible.

7 JUDGE GERGEL: Well, don't you worry about that one.

8 MR. MOORE: I appreciate that, your Honor. I very
9 much appreciate that. And I'm sure that Representative
10 Bamberg would as well.

11 I'll close with these remarks, your Honor. Finding
12 for the plaintiff would entail ignoring direct evidence
13 pointing to the fact that these maps were not the product of
14 discriminatory intent. Going back to the text messages that
15 we showed you earlier, all the conversations that are
16 discussed there, political data, voter behavior, public input,
17 incumbency considerations, communities of interest and other
18 traditional redistricting principles were all reasons why the
19 House decided to concur with the Senate. The Senate's plan
20 had a realistic shot of passing both chambers of the General
21 Assembly, and it did so. But there is no evidence in this
22 record, we would submit, no probative evidence, that indicates
23 that the Senate plan was the product of discriminatory intent,
24 and no evidence that the House joined in. Thank you.

25 JUDGE GERGEL: Thank you, Mr. Moore.

1 Reply by the plaintiffs?

2 MS. ADEN: Thank you, your Honors. I will try to be
3 brief.

4 Plaintiffs certainly appreciate the focus on CD 1 and
5 the harms in Charleston County, because we agree that nothing
6 about the sorting of voters there is coincidental. It is a
7 racial gerrymander, and it is part of the evidence of
8 intentional discrimination.

9 What is instructive is for the Court to consider in
10 *LULAC vs. Perry*, and in the *Bartlett v. Strickland* case, that,
11 in similar circumstances, the Court indicated that where a
12 community was trending in a direction about to exercise their
13 power, and it was destroyed in the way that it was through the
14 engineering in CD 1, that that bears the mark of intentional
15 discrimination. And we point your Honors in that direction as
16 well.

17 But we are not in the business of giving up. And
18 while the Court is focused on CD 1, there is similar disregard
19 to the way that Black voters were treated under Districts 2
20 and 5, and the way that TRPs that were expressly said were
21 important, such as healing political boundaries, were not done
22 in CDs 2 and 5. There may not be a sophisticated movement of
23 voters in those areas, but the city and the county of Sumter
24 were split -- the public, there was a chorus saying, "keep us
25 whole." That county, that is majority Black in both the city

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1 and the county, was disregarded. The decisions in CD 2, and
2 the hook in Richland County, while they may be carryovers of
3 decisionmaking in some regard as last cycle, there were
4 changes made there in the maintenance and the continued
5 disregard of Black communities in breaking up neighborhoods,
6 VTDs that goes against the redistricting principles that were
7 stated publicly. And it did not have to be that way, given
8 all of the proposed alternative plans that were offered by the
9 public.

10 JUDGE GERGEL: Ms. Aden, what are we to make -- I'm
11 focusing on CDs 2 and 5 for a moment. What are we to make of
12 Mr. Tresvant's map and then the Milk Plan? Are we inferring
13 from that? Because Sumter is split previously, and
14 Congressman Clyburn apparently was asking for a larger part of
15 it into his district, which was honored. And he didn't
16 question the hook.

17 What are we to make of that? Is it irrelevant? Is
18 it something we should assume Congressman Clyburn had some
19 adverse intent? How are we to address that?

20 MS. ADEN: I think it's largely irrelevant, your
21 Honor. Representative Clyburn provided a hardcopy map, a
22 partial map, that then was reproduced into a whole Milk Plan
23 by the decision makers. And that map bears striking -- it's
24 not similar to the map that was ultimately adopted in many
25 different regards --

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1 JUDGE GERGEL: I agree with that. But I'm just --
2 the parts that you're focused on, which is Sumter and -- you
3 know, it's in Sumter, there's a little bit in Orangeburg,
4 there's a little bit in Jasper, there's the hook in Richland,
5 all which, if there wasn't a history, you might say, whoa,
6 what's going on here, they existed and they were supported by
7 an elected -- the state's most prominent African-American
8 elected official. I'm just trying to figure out, how are we
9 to deal with that, when we're not enthusiastic about your
10 *Arlington Heights* theory, so we're really focusing on racial
11 gerrymandering. How do we get to racial predominance? You
12 know, how do we get there, when all of us admire Congressman
13 Clyburn and have trouble envisioning that he would have a role
14 in a racial gerrymander?

15 MS. ADEN: I don't think that the record reflects
16 that his opinion, his proposed map, carried the day at all.
17 It was shared early on in the legislative process as a partial
18 map like --

19 JUDGE GERGEL: I've studied his map, not the Milk
20 Plan, for the reason you point out, that's it's not identical.

21 MS. ADEN: And no testimony was given in support of
22 that map. We have no idea how that map fits into the scheme
23 outside of what the defendants produced in the Milk Plan.

24 JUDGE GERGEL: Don't you have to assume that it just
25 was his view that this was a proper plan? Let's just assume

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1 that for a minute. What weight should we give it? I mean,
2 he's obviously very knowledgeable about the racial politics of
3 South Carolina. And, I mean, notably in Charleston. They
4 don't follow him in Charleston, right? It's the outlier. But
5 they do -- but the Sumter, and Orangeburg and Sun City are
6 all, you know, seem to be at least endorsed by him. I'm
7 struggling with how we're supposed to deal with that.

8 MS. ADEN: With all due respect to Representative
9 Clyburn, he was not a decision maker. The decision makers
10 were those that we sued in others. Regardless of the race of
11 the representative, if lines were drawn to harm Black voters
12 in ways that were not justified by the criteria, in ways that
13 they did not have to be because of alternative plans, and in
14 ways that we do not have testimony in the record from
15 Representative Clyburn that that is what he -- of any
16 motivation behind his map, the weight of the evidence, both --
17 the evidence from -- if we can look at slide 4, which is in
18 our PDF 8 -- I mean, the movement of voters in 2 and 5, just
19 like CD 1, it doesn't make any sense. If it was just about
20 repopulating people, why are you moving 41,000 people in CD 5?
21 And why, based upon the evidence of our experts -- whether
22 it's Dr. Ragusa, Dr. Liu, Dr. Duchin, why does the statistical
23 evidence show that the plan would not look the way that the
24 enacted plan looked, that it was race, not party, that more
25 explained what is happening in the lines, not just in CD 1 but

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1 in CDs 2 and 5?

2 And we really cannot put the onus on the way that
3 Sumter and the way that Richland looked on a partial map,
4 hand-delivered by someone from Representative Clyburn's office
5 in the fall, well before Senate Amendment 1, and a map that
6 like the NRRT map that they say we can just throw in the trash
7 because they didn't matter at all, because they were outside
8 of the process, because we didn't look at them, because they
9 didn't matter because they didn't go through the formal
10 channel. If they have no regard for the NRRT map, they should
11 have no regard for Representative Clyburn's map and the way
12 that it was part of the record in the legislative process.

13 The weight of the evidence, the fact in expert
14 evidence, is that people asked for Sumter County to be made
15 whole, and it was not made whole, unlike majority White
16 communities, and similar in Richland. And the statistical
17 evidence shows that not only was race driving it, but that
18 there is reduced electoral opportunity. If you can look at
19 Dr. Duchin's slide, the 2020 presidential election, we see, in
20 fact, in slides 75 and 76, that there is reduced opportunity.
21 It is not just in CD 6, but if you can see from Senator
22 Harpootlian's map, there was an opportunity to create more
23 electoral opportunity in CD 5. And that was destroyed in the
24 same way that electoral opportunity was taken away, or in a
25 similar way that electoral opportunity was taken away in CD 1.

1 And this is not by coincidence. These are important
2 areas of the state where there is a perception, one way or the
3 other, of how Black voters vote. There is a perception that
4 they participate in a certain way. And based upon that
5 perception, like in the *Harris* case, like in the *LULAC v.*
6 *Perry* case, like in *Hunter v. Underwood*, like in *North*
7 *Carolina v. McCrory*, like in *Cooper v. Harris*, like in *Perez*
8 *v. Abbott*, that an intent to disadvantage minority citizens to
9 gain perceived political or partisan benefits qualifies a
10 discriminatory intent. So, even if we can't show that race
11 was the motivating factor there, the weight of the evidence
12 shows that these Black communities were cracked as a means to
13 minimize their electoral voting power in similar ways as in CD
14 1. And we cannot leave today without commanding you to look
15 at the evidence that also points in the favor under maybe a
16 different theory, but, nonetheless, the weight of the evidence
17 points in that direction.

18 Just to follow up very briefly, Judge Heytens, on
19 your question, I just don't think it's as simple as if you
20 lose on racial gerrymandering, you can just repackage the
21 evidence. There were a number of cases, *Cooper*, *Page*,
22 *Bethune*, *ALBC*, from last cycle, racial gerrymandering claims.
23 Other stuff was happening in the legislative process, other
24 stuff was happening with impact, but the decision makers, the
25 plaintiffs there, did not bring an addendum or, apart from

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1 that, intentional racial discrimination claims under the 14th
2 and 15th Amendments, because the weight of the evidence didn't
3 show itself there. But it did here, just like it did in *Perez*
4 *v. Abbott*. And it's just simply not an end runaround. We're
5 not trying to get a result one way or the other. This is
6 where the weight of the evidence, we think, points under
7 theories that the Supreme Court has recognized and other
8 courts have recognized in the redistricting context.

9 If I can briefly say on remedies, the remedies for
10 intentional vote dilution and racial gerrymandering, they may
11 be distinct. Intentional racial discrimination, we believe,
12 taints the entire map and may require the General Assembly to
13 redraw the whole map to remove discrimination, root and
14 branch, instead of the challenged districts and the boundaries
15 bordering those districts. That is likely a different remedy
16 than in a racial gerrymandering context, which will require
17 the legislature to redraw the challenged districts and certain
18 areas bordering it potentially, consistent with traditional
19 redistricting principles, without race being the predominant
20 reason. And as a practical matter, what that means is that
21 you respect your traditional redistricting principles, which
22 in South Carolina means leaving people where they live, where
23 they work, and where the natural geography of the state is.
24 And because of that, because of the voting patterns that are
25 associated with that, that's why they've been cracked. But if

1 you simply respect the traditional redistricting principles,
2 the outcomes will be what they are, and not for someone to toy
3 with an engineer to try to disrupt.

4 After an eight-day trial, hundreds of pages of
5 post-trial briefing, and now defendants' closing presentation,
6 there are irrefutable facts that are detailed in plaintiffs'
7 post-trial findings of fact. There are not
8 misrepresentations. If there are any errors, we are happy to
9 correct them. But we don't need to mischaracterize the
10 evidence; the evidence is what it is. And the weight of the
11 evidence establishes a violation of either or both the
12 plaintiffs' claims. If one looks at the map that the South
13 Carolina Legislature enacted this cycle, this map does not
14 make sense. It is not a coincidence. And the Black voters
15 who have come today to represent their communities in the
16 courtroom, they should not endure the indignity of these
17 constitutional violations, and there must be a remedy.

18 We ask that you enter judgment for plaintiffs, and if
19 time permits, allow the legislature the opportunity to correct
20 their errors and to recognize the constitutional rights of our
21 clients and others in the community. And we look forward to
22 having a potentially separate remedial hearing, where we can
23 offer ideas about what that process might look like.

24 We very much appreciate the patience, and the
25 attention, and the care of this Court, and also its staff,

